

Frank A. Piffner
HUGHES BAUMAN PFIFFNER
GORSKI & SEEDORF, LLC
3900 C Street, Suite 1001
Anchorage, AK 99503
Phone: (907) 263-8241
Fax: (907) 263-8320
E-mail: fap@hbplaw.net
ABA No. 7505032

Attorneys for Defendant
Caterpillar Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

NINILCHIK CHARTERS, LLC,

Plaintiff,

vs.

CATERPILLAR, INC., a Delaware
corporation,

Defendant.

Case No. A04-0250 CV (JKS)

STIPULATION MODIFYING SCHEDULING AND PLANNING ORDER

It is hereby Stipulated by the parties to the above matter, plaintiff NINILCHIK CHARTERS, LLC and defendant CATERPILLAR INC., through their counsel of record, that the Scheduling and Planning Order dated November 10, 2004, and modified by orders dated September 7, 2005, (Docket No. 16) and December 6, 2005 (Docket No. 18)

be amended as follows:

(1) All discovery must be scheduled so as to be completed by June 30, 2006 (“discovery close date”), and all associated disclosure deadlines shall travel with the discovery close date.

This Stipulation is entered on the basis that during recent depositions, as well as inspections of the product at issue, it was discovered that, in plaintiff’s mandatory disclosures and during the course of discovery, plaintiff inadvertently provided the incorrect serial number for the subject Caterpillar marine engine. The incorrect serial number pertained to a completely separate line of engines that has little to no bearing or relationship to the facts and circumstances surrounding this action. This newly acquired information, unfortunately, vastly changes the factual complexion of the case and the discovery that must now be conducted.

Despite the fact that the parties have engaged in extensive and meaningful discovery to date, including written discovery, depositions, and expert inspections, the fact remains that the majority of the pertinent information discovered has now become inapplicable. The parties are now under the additional obligation to supplement not only their Rule 26 Disclosures, but also all discovery responses that have been provided to date. Moreover, there is a high probability that the depositions and expert inspections that were already completed will need to be conducted again.

As shown, both parties have been diligent in the development of their respective claims and defenses in preparation for trial. However, due to an unexpected and unintentional error, the case has taken a step back. Accordingly, while the parties acknowledge and respect the Court's reluctance to grant such continuances, the parties are in agreement that the four month continuance is necessary to the proper preparation of this matter for trial.

DATED at Anchorage, Alaska, this 9th day of January, 2006.

DAVIS, RANDALL, ANDERSON &
MATHIS, P.C.
Attorneys for Plaintiff

By: 

Leonard R. Anderson
405 w. 36TH Avenue, Suite 200
Anchorage, AK 99503
Phone: (907) 561-4420
Fax: (907) 562-7888
E-mail: Leonard@davis2.com
ABA No. 9411092

DATED at Anchorage, Alaska, this 9th day of January, 2006.

HUGHES BAUMAN PFIFFNER
GORSKI & SEEDORF, LLC
Attorneys for Defendant Caterpillar Inc.

By: /s/ Frank A. Pfiffner
Frank A. Pfiffner
3900 C Street, Suite 1001
Anchorage, AK 99503
Phone: (907) 263-8241
Fax: (907) 263-8320
E-mail: fap@hbplaw.net
ABA No. 7505032

Certificate of Service

I hereby certify that on January 9, 2006,
a copy of the foregoing Stipulation
Modifying Scheduling and Planning
Order was served on the following by
regular U.S. mail:

Leonard R. Anderson
Davis, Randall, Anderson, & Mathis, PC
405 W. 36th Avenue, Suite 200
Anchorage, AK 99503-5872

/s/ Frank A. Pfiffner